APPENDIX A

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Secs. 151, *et seq.*) are as follows:

Sec. 8(b) It shall be an unfair labor practice for a labor organization or its agents—

* * * * *

(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is: * * *

(B) forcing or requiring any person to cease using, selling, handling, transporting or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9: * * *

Provided further, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are

distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;

Sec. 8 (e) It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void: *Provided*, That nothing in this subsection (e) shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building structure, or other work: *Provided further*, That for the purposes of this subsection (e) and section 8(b) (4) (B) the terms "any employer," "any person engaged in commerce or an industry affecting commerce," and "any person" when used in relation to the terms "any other producer, processor, or manufacturer," "any other employer," or "any other person" shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry: *Provided further*, That nothing in this Act shall prohibit the enforcement of any agreement which is within the foregoing exception.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD, *Petitioner*, and CASCADE EMPLOYERS ASSOCIATION, INC., *Intervenor*, vs. SALEM BUILDING TRADES COUNCIL, AFL-CIO, *Respondent*.	No. 21,888

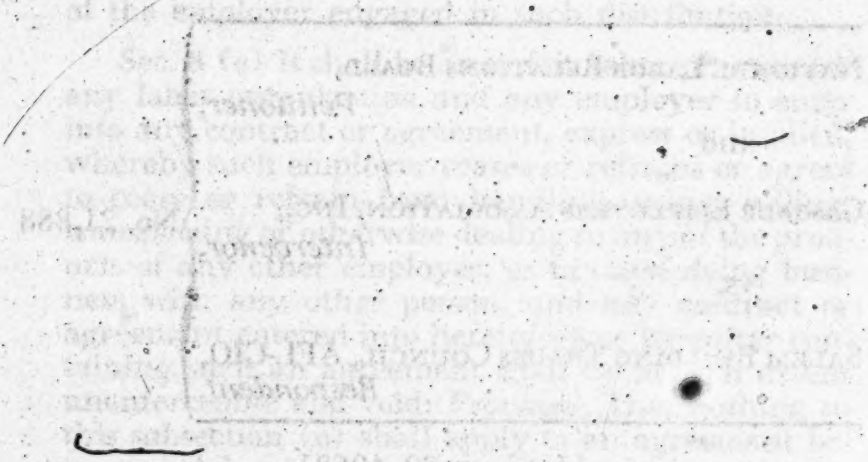
[January 22, 1968]

On Petition for Enforcement of an Order of the National Labor Relations Board.

Before: JERTBERG and BROWNING, Circuit Judges, and BOLDT, District Judge.

PER CURIAM:

The petition of National Labor Relations Board, pursuant to Section 10(e) of the National Labor Relations Act, as amended, (29 U.S.C. § 151 et seq.), for a decree enforcing the order of the Board issued against the Salem Building Trades Council, AFL-CIO, on February 20, 1967, is granted for the reasons stated and the authorities cited in the Board's decision and order reported at 163 N.L.R.B. #9.



APPENDIX C

163 NLRB No. 9

D-9552
Salem, Oregon

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

SALEM BUILDING TRADES
COUNCIL, AFL-CIO

and

Case No. 36-CC-155

CASCADE EMPLOYERS ASSOCIATION, INC.

DECISION AND ORDER

Upon a charge and an amended charge filed on October 9, 1965, and December 10, 1965, respectively, by Cascade Employers Association, Inc., for and on behalf of its employer-members, Reimann Construction Co., herein called Reimann, and Hyatt Lodge, the General Counsel of the National Labor Relations Board by the Regional Director for Region 19 issued a complaint dated December 17, 1965, against the Salem Building Trades Council, AFL-CIO, herein called Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8(b)(4)(i) and (ii)(B) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before a Trial Examiner,

were duly served upon the Respondent and the Charging Party. On January 17, 1966, Respondent filed its answer admitting certain allegations of the complaint, but denying the commission of any unfair labor practices.

On March 28, 1966, the Respondent, the Charging Party, and the General Counsel entered into a stipulation of facts wherein they identified the contents of the record in this case and agreed to transfer this proceeding directly to the Board for issuance of a Decision and Order after the filing of briefs and without further hearing. The stipulation states in substance that the parties waive their rights to a hearing before a Trial Examiner and to the issuance of a Trial Examiner's Decision, and that the charge, amended charge, complaint, answer, and the stipulation and exhibits attached hereto should constitute the entire record in this case. On April 7, 1966, the Board approved the stipulation, ordered transferral of the proceeding to the Board, and granted permission to the parties to file briefs. Briefs were filed by the Respondent, Charging Party, and General Counsel.

Upon the basis of the aforesaid stipulation and the entire record in the case, and having considered the briefs of the parties, the Board makes the following:

Findings of Fact

I. The Business of the Employers

Reimann Construction Co. is an Oregon corporation engaged as a general contractor in the building and construction industry with its principal office and place of business at Salem, Oregon. In the operation of its business during the last fiscal year, Reimann performed general contracting services valued in excess of $500,000. During the same period, Reimann purchased goods and materials valued in excess of $10,000 which were transported to it directly from locations outside the State of Oregon.

Northridge Industries, formerly known as Hyatt Chalet Motels, Inc., and herein called Northridge, is a California corporation with its principal office and place of business at Sepulveda, California. It is engaged in the ownership and operation of some 38 motels, in 14 States including Oregon, primarily for the accommodation of transients. In the course and conduct of its business operations during the past year, Northridge received at least $1,000,000 gross revenue, of which more than 75 percent was received from transient guests.

During April 1965, Northridge entered into a contract with Reimann for construction of a motel, herein called Hyatt Lodge, for a contract price of about $208,000.

During June 1965, Candelaria Investment Co., an Oregon Corporation, herein called Candelaria, entered into a contract with Reimann for the construction of a building within the Candelaria Shopping Center. Subsequently, Candelaria leased this building to Farrell's Ice Cream Parlor, herein called Farrell's.

The parties concede, and we find, that Reimann and Northridge are now, and have been at all times material herein, employers within the meaning of Section 2(2) of the Act, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.[1]

II. The Labor Organization Involved

The parties concede, and we find, that Salem Building Trades Council, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

The Respondent and Reimann, the primary employer, have been engaged in a labor dispute since January 1, 1963, purportedly because the carpenters and laborers employed by Reimann receive wages, and work under conditions, that are substantially inferior to those provided for under union contracts in the Salem, Ore-

1. As Reimann, the primary employer herein, meets the Board's minimum commerce requirements, jurisdiction is asserted in this case over Northridge, Candelaria, and Farrell's without further inquiry. See *Truck Drivers Local Union No. 649, etc. (Jamestown Builders Exchange, Inc.)*, 93 NLRB 386, 387; *Journeymen Barbers, Hairdressers, etc. (Chicago and Illinois Hairdressers Assn.)*, 120 NLRB 936, 938.

gon area. The Respondent does not have a labor dispute with Northridge, Candelaria, or Farrell's.

As heretofore indicated, in April 1965, Northridge entered into a contract with Reimann for the construction of the Hyatt Lodge Motel, and in June 1965, Candelaria engaged Reimann for the construction of a building within the Candelaria Shopping Center.[2] Reimann, employing nonunion carpenters and laborers, completed work on the motel October 11 and on the shopping center building October 14. Hyatt Lodge opened for normal motel business immediately upon completion, and Farrell's Ice Cream Parlor, the tenant in Candelaria's new building, began retail operations on November 9, 1965.

The Respondent picketed the premises of Hyatt Lodge between November 8 and December 20, 1965, and that of Farrell's sporadically between November 9 and November 15, 1965. In both situations the picketing occurred during regular business hours, was conducted only at customer entrances and did not interfere with deliveries. No customer was requested not to enter the premises or not to patronize either establishment. The pickets carried signs with the following legend:

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2. The Oregon State Building and Construction Trades Council was informed by the Respondent that Reimann was performing general contracting work at the motel site. The Trades Council advised Northridge, by letter dated May 27, that Reimann was on the unfair list and that unless nonunion firms were removed from the motel job, Northridge would be placed on the same list. Northridge was never placed on such a list.

THIS
BUILDING
BUILT UNDER
SUB-STANDARD
WAGES AND CONDITIONS
BY
REIMANN CONSTRUCTION COMPANY
SALEM BUILDING TRADES COUNCIL

It is alleged in the complaint, *inter alia,* that by its picketing, Respondent threatened, coerced, and restrained Hyatt Lodge and Candelaria, and induced and encouraged their employees and employees of their suppliers, carriers, service firms, tenants and other persons to strike or refuse to perform services, all with an object of forcing those persons who regularly do business with Hyatt Lodge and Candelaria to cease doing such business and forcing Northridge, Hyatt Lodge and Candelaria and prospective customers and persons who regularly do business with Reimann, to cease doing business with Reimann, in violation of Section 8(b)(4)(i)(ii)(B) of the Act.

Absent an existing business relationship between the primary employer and the affected employers at the time of the picketing, Respondent contends it is not possible to find that such picketing was to force or require any person to cease doing business with any other person within the language of Section 8(b)(4)(B) and, therefore, no violation could have occurred. From the

stipulation it is clear that at the time Respondent picketed the motel and the ice cream parlor, Reimann had completed its construction contracts with Northridge and Candelaria and that no business relationship existed between Reimann and Farrell's. There is no indication that the motel, as such, or the ice cream parlor has ever engaged in business with Reimann in the past or intends to do business with Reimann in the future. Nor was evidence presented to establish that Northridge or Candelaria had any specific future plans of like nature. Thus, the threshhold issue presented by Respondent's defense in this case is whether picketing in furtherance of a primary labor dispute, conducted at premises occupied solely by neutral employers, violates Section 8(b)(4)(B) despite the absence of a present business relationship between the employers involved.

In shielding "unoffending employers and others from pressures in controversies not their own,"[3] Section 8(b)(4) of the Act was not limited to situations where such neutrals have an existing business relationship with an employer who is a party to a labor dispute. The Board and Courts have held that "the victim's neutrality" is "conceived to be the central element of Congressional concern in this area," and that Congress did not intend to confine Section 8(b)(4) to a strict and

3. *N.L.R.B. v. Denver Building & Construction Trades Council*, 341 U.S. 675, 692.

precise definition of terms which would limit its application in protecting neutral employers.[4] Accordingly, without conceding the absence thereof, we reject Respondent's contention that an existing business relationship between the primary and secondary employers is an indispensible prerequisite for finding a violation.

Nor, by deferring picketing to periods during which no overt manifestation of business dealings is apparent, has Respondent been able to so obscure the business relationships involved as to make the unlawful object of its picketing unidentifiable. Northridge and Candelaria are engaged in businesses which, as the stipulated record discloses, expand through construction of new facilities. The picketing herein stemmed directly from their having utilized the services of Reimann in the construction of their most recent additions. As a general contractor in the construction industry in the area where both Northridge and Candelaria operate, Reimann remained within that class of employers to whom

4. Indeed, retaliatory picketing growing out of an interunion controversy and enmeshing neutral employers has been found unlawful under this Section where causing a cessation of business between neutral employers by means of picketing was an intermediate step in achieving the end objective of forcing a cessation of picketing by another union at another location. For, "in determining legality of object [the Board] does not differentiate between the ultimate, alternative, conditional, or immediate nature of the various objectives that may be involved in the activities of a [picketing] labor organization." See the Board and Court opinions in *National Maritime Union of America, AFL-CIO (Weyerhaeuser Lines)*, 147 NLRB 1317 and *(Houston Maritime Association, Inc.)*, 147 NLRB 1243, enfd. 342 F. 2d 538 (C.A. 2), cert. denied 382 U.S. 835, and *National Maritime Union of America, AFL-CIO (Delta Steamship Lines, Inc.)*, 147 NLRB 1328, enfd. 346 F. 2d 411 (C.A. D.C.), cert. denied 382 U.S. 840. Also see *International Longshoremen's Association, Local 1224, et al, AFL-CIO (Jess Edwards, Inc.)*, 160 NLRB No. 65, at p. 6.

future construction contracts might be awarded. Thus, it is apparent that at the very least an object of the picketing was forcing and requiring Northridge and Candelaria to refrain from utilizing Reimann's services for any future construction. Further, the nature and location of the picketing indicate that Respondent's conduct was also designed to serve notice on all other persons of the retaliatory economic consequences of retaining or otherwise doing business with Reimann. In our view, the language of Section 8(b)(4)(B) is broad enough to include attempts to preclude neutral employers from using the services of a construction contractor.[5] To hold, as Respondent would have us do, that upon the completion of one contract the neutral employers, by virtue of their past business dealings, become fair game for picketing pressures by a union seeking, as here, to enforce its blacklist of the primary employer, would be to apply that Section in a manner inconsistent with both its terms and the basic policy considerations underlying its enactment.

However, Respondent contends that because the banners used in patrolling before the buildings did not request members of the public not to trade at the ice cream store or not to patronize the motel, it cannot be found that a purpose of the picketing was to cause a

5. Compare the handbilling involved in *N.L.R.B. v. Servette Inc.*, 377 U.S. 46, 55.

cessation of business.[6] We do not agree. Various other factors in addition to the picket sign language may reveal the purpose of a picket line. Here, (1) the timing of the picketing, after the primary employer had completed its work and departed and after neutral employers (the operating division of Northridge and Candelaria's tenant, Farrell's), had occupied the buildings and opened for business; (2) the situs of the picketing, in front of the premises of neutral retail employers neither of whom was purveying to its customers any goods or services produced by the primary employer,[7] with no effort made to mitigate the effect of confrontation by customers and others with the picket line and no steps taken to insure against general economic injury to the building occupants; and (3) the implication to be drawn from the wording of the picket sign, that the premises picketed was encompassed in the labor dispute, all reveal a design to affect some aspect of those neutral business operations.[8] Consideration of these circumstances in light of the foregoing reveals that through the pressures thus placed upon the building occupants by the picket line established between their premises and their

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6. In suport of this argument Respondent quotes the Supreme Court's decision in *N.L.R.B. v. Fruit and Vegetable Packers Local 760 (Tree Fruits)*, 377 U.S. 58, and represents it as holding that a necessary element for finding a violation is the seeking of "the public's assistance in forcing the secondary employer to cooperate with the Union in its primary dispute." In our view this phrase is taken out of context and is misapplied.
7. See *Local 254, Building Service Employees (University Cleaners Co.)*, 151 NLRB 341.
8. Cf. *Chicago Typographical Union No. 16 (Alden Press, Inc.)*, 151 NLRB 1666, 1669.

suppliers and customers Respondent was forcing such persons to cease using the buildings and thus requiring them to cease doing business with the building owners; in turn thereby requiring the owners not to engage the services of Reimann with whom the Respondent had a labor dispute. Such a purpose is consistent with the demand made by the Oregon Trades Council upon Northridge.

Equally untenable are Respondent's contentions that its picketing was protected by the publicity proviso to Section 8(b)(4) and the First Amendment. Respondent claims in this connection that it is entitled under constitutional guarantees of free speech to inform the general public of the fact that the buildings had each been constructed under substandard wage and employment conditions by an employer with whom it has a primary dispute, and that in doing so peacefully and truthfully, its conduct is freed from the interdictions of Section 8(b)(4)(B). We have found that the picketing here had an objective proscribed by Section 8(b)(4)(B). It is well settled that picketing which constitutes proscribed pressures for an unlawful objective is not privileged by the First Amendment of the Constitution and is not excused by the fact that it also may have had an informational purpose.[9]

9. See *Houston Maritime Association*, footnote 4, *supra* at p. 1946; *International Brotherhood of Electrical Workers, Local 501, et al (Samuel Langer) v. N.L.R.B.*, 341 U.S. 694, 705.

Nor do we view the identification of the building as the offending product sufficient to convert Respondent's picketing into lawful primary activity at a secondary situs. As was recently observed by the Circuit Court of Appeals for the Tenth Circuit:[10]

> Broadly stated, the evil to which the 8(b)(4) amendments are directed *is secondary union activity which does not encompass some direct action against the primary antagonist*, ... [Emphasis supplied.]

The picketing here cannot be said to have had any reasonably direct thrust against the primary employer. Indeed, the location and timing disclose that it was designed to avoid a confrontation with the primary employer and his employees. Even assuming, *arguendo*, that identification of the building as the subject of the dispute created an appeal for a consumer boycott of the so-called "product" of the primary employer, such a product boycott would of necessity encompass the entire business of the neutral occupant's premises and therefore the entire business of the secondary employer, and must be said to be "employed to persuade customers not to trade at all with the secondary employer" and "designed to inflict injury on his business generally."[11]

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10. *N.L.R.B. v. Building Service Employees International Union, Local No. 105*, 367 F. 2d 227, 229 (C.A. 10); see also *Millmen and Cabinet Makers Union, Local 550, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Steiner Lumber Company)*, 153 NLRB 1285, enfd. 367 F. 2d 953 (C.A. 9).

11. *N.L.R.B. v. Fruit & Vegetable Packers (Tree Fruits)*, footnote 6, *supra*, at p. 72.

Inasmuch as the instant picketing was not sufficiently identified with, or limited to, the operations of the primary employer to constitute primary activity, but was designed to inflict injury on the secondary employers' businesses generally, for an object of forcing or requiring neutral employers to cease using the product of another producer, in order to force or require secondary employers to cease using the services of or doing business with the primary employer, we find that Respondent did threaten, restrain, and coerce the neutral employers within the meaning of Section 8 (b) (4) (ii) (B) of the Act.[12]

The record fails, however, to disclose any conduct which furnishes a reasonable basis for concluding that Respondent's conduct was calculated to invite neutral employees to make common cause by engaging in work stoppages. Accordingly, we shall dismiss the complaint insofar as it alleges that Respondent violated Section 8 (b) (4) (i) (B) of the Act.[13]

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12. *Alton-Wood River Building and Construction Trades Council, AFL-CIO, et al.*, 154 NLRB 982.

13. The Board has held that peaceful picketing of neutral premises does not automatically fall within the proscription of paragraph (i) of Section 8(b)(4), but that the validity depends upon a consideration of all the surrounding circumstances. See *University Cleaners Co.*, footnote 7, *supra*, at p. 348, enfd. 359 F. 2d 289 (C.A. 1); *Building Service Employees International Union, etc. (Industrial Janitorial Service, Inc.)*, 151 NLRB 1424, 1425, enfd. 367 F. 2d 227 (C.A. 10).

IV. The Effects of the Unfair Labor Practices Upon Commerce

The activities of the Respondent set forth above, occurring in connection with the operations of Northridge, Candelaria, Hyatt Lodge, and Farrell's as set forth in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and free flow of commerce.

V. The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order that it cease and desist therefrom and take certain affirmative action that we find necessary to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, we adopt the following:

Conclusions of Law

1. Reimann Construction Company, is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Northridge Industries, Candelaria Investment Company, and Farrell's Ice Cream Parlor are persons

engaged in an industry affecting commerce within the meaning of Section 2(6) and (7) of the Act.

3. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.

4. By threatening, coercing, and restraining Northridge Industries, Candelaria Investment Company, Farrell's Ice Cream Parlor and other persons, with an object of forcing said persons to cease using the products of Reimann or to cease doing business among them and with Reimann Construction Company, Respondent had engaged in unfair labor practices within the meaning of Section 8(b)(4)(ii)(B), and Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Salem Building Trades Council, AFL-CIO, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Threatening, restraining, or coercing Northridge Industries, Candelaria Investment Company, Farrell's Ice Cream Parlor, or any other person or persons, where an object thereof is to force or require said persons to cease using the products of Reimann or to cease

doing business among them and with Reimann Construction Company, under circumstances prohibited by Section 8(b)(4)(ii)(B) of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Post at their business offices and meeting halls, in Salem, Oregon, copies of the attached notice marked "Appendix."[14] Copies of said notice to be furnished by the Regional Director for Region 36, shall, after being duly signed by the Union's representative, be posted by the Union immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicious places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Union to insure that said notices are not altered, defaced, or covered by any other material.

(b) Sign and mail to the Regional Director for Region 36 sufficient copies of said notice, to be furnished by him, for posting by Northridge Industries, Candelaria Investment Company, and Farrell's Ice Cream Parlor, if willing.

(c) Notify the said Regional Director, in writing,

14. In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "a Decision and Order" the words "a Decree of the United States Court of Appeals, Enforcing an Order."

within 10 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. Feb. 20, 1967.

Frank W. McCulloch, Chairman

Gerald A. Brown, Member

Howard Jenkins, Jr., Member

Sam Zagoria, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

APPENDIX

NOTICE TO ALL MEMBERS
PURSUANT TO
A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby give notice that:

WE WILL NOT in any manner prohibited by Section 8(b)(4)(B) of the Act, threaten, coerce, or restrain Northridge Industries, Candelaria Investment Co., Farrell's Ice Cream Parlor, or any other person or persons, by striking or picketing, where in any case an object thereof is to force or require said persons to cease using the products of Reimann or to

cease doing business among them and with Reimann Construction Company.

SALEM BUILDING TRADES COUNCIL, AFL-CIO
(Labor Organization)

Dated _____

By _____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Persons may communicate directly with the Board's Regional Office, 612 Lincoln Building, 208 SW Fifth Ave., Portland Oregon, 97204 (Tel. No. 226-3351, Ext. 1431), if they have any question concerning this notice or compliance with its provisions.